

(3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;

(4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and

(5) Providing the employee and employer with recommendations for continuing education and/or treatment.

(b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

(a) Provide a comprehensive face-to-face assessment and clinical evaluation.

(b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.

(1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.

(2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.

(c) Appropriate education may include, but is not limited to, self-help groups (*e.g.*, Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.

(d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.

(e) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (see § 40.311(c)).

(f) For purposes of your role in the evaluation process, you must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. You must not take into consideration in any way, as a factor in determining what your recommendation will be, any of the following:

(1) A claim by the employee that the test was unjustified or inaccurate;

(2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (*e.g.*, related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or

(3) Personal opinions you may have about the justification or rationale for drug and alcohol testing.

(g) In the course of gathering information for purposes of your evaluation in the case of a drug-related violation, you may consult with the MRO. As the MRO, you are required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

(a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.

(b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.